

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 45-003-13-1-5-00171-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-14-151-023.000-003
Assessment Year: 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Nowacki contested the 2013 assessment of his property located at 2339 Cline Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential lot at \$3,000 for 2013.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On December 3, 2018, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Nowacki’s petition. Neither she nor the Board inspected the subject property.
3. Nowacki appeared pro se. The Assessor appeared by Hearing Officers, Robert W. Metz and Joseph James. They were all sworn as witnesses.

RECORD

4. The official record contains the following:

Respondent Exhibit 1: Property record card (“PRC”) for 2011-2013
5. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.¹

BURDEN OF PROOF

6. Generally, a taxpayer seeking review of an assessing official’s determination has the

¹ Nowacki offered no exhibits.

burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year’s assessment, or where it is above the level determined in a taxpayer’s successful appeal of the prior year’s assessment. I.C. § 6-1.1-15-17.2(b) and (d).

7. There was no change in the subject property’s assessment from 2012 to 2013. Nowacki bears the burden of proof.

SUMMARY OF CONTENTIONS

8. Nowacki’s case:
 - a. In 2010, the \$30,400 assessment included a “structure”, which was actually a pile of debris. The Assessor eventually removed the improvement value from the assessment. The property’s value has vectored down to \$1,300 through 2017. It is now down to 4% of the 2010 value. *Nowacki testimony.*
 - b. Nowacki contends the vectoring down bears out the argument he is making. Properties in Gary are declining at a precipitous rate. The collapsing market structure is the direct result of the reckless activities of the assessors’ offices and assessments that are damaging and irrational. *Nowacki testimony.*
 - c. He contends that the 2013 value should be \$1,500. This is reasonable given the fact that the assessed value is now \$1,300. *Nowacki testimony.*
 - d. The PRC shows he purchased the property in 1998. He wasn’t in Gary in 1998. This and the fact that the property was once assessed at 25 times its 2017 value is a prime example of the overall sloppiness at the assessors’ offices. *Nowacki testimony.*
9. The Assessor’s case:
 - a. The Assessor contends there is no market evidence to support a change in the assessment. The Assessor recommends no change for 2013. *James testimony.*

ANALYSIS

10. Nowacki failed to make a prima facie case for reducing the subject property’s 2013 assessment. The Board reached this decision for the following reasons:
 - a. The goal of Indiana’s real property assessment system is to arrive at an assessment reflecting the property’s true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. “True tax value” does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance

- (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines “true tax value” as “market value in use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.
- b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The assessment valuation date for 2013 was March 1. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the subject property’s 2013 assessment should be \$1,500 but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. We also give no weight to his claims regarding the decreasing assessment. The Assessor’s decision to decrease the property’s assessment in subsequent years does not prove that its 2013 assessment was incorrect. As the Tax Court has explained, “each tax year---and each appeal process--- stands alone.” *Fisher v. Carroll Cnty Ass’r*, 74 N.E.3d 582 (Ind. Tax Ct. 2017). Evidence of a property’s assessment in one year, therefore, has little bearing on its true tax value in another. *See e.g. Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001); *Barth, Inc. v. State Bd. of Tax Comm’rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998)
- e. Nowacki claims there are errors on the PRC, specifically the year he acquired the property. Even if the transfer date is in error, simply pointing out an error is insufficient to rebut the presumption that the assessment is correct. *Eckerling*, 841 N.E.2d at 678. To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Id.*
- f. Because Nowacki offered no probative market-based evidence to demonstrate the subject property’s correct market value-in-use, he failed to make a prima facie case for a lower assessment. Where a Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence

is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the subject property's 2013 assessment.

ISSUED: February 11, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.